

SEP - 7 1979 - 2 40 PM



LOUISVILLE & NASHVILLE RAILROAD COMPANY INTERSTATE COMMERCE COMMISSION

908 W. BROADWAY • LOUISVILLE, KENTUCKY 40203 TELEPHONE (502) 587-5235

LAW DEPARTMENT

September 6, 1979

DAVID M. YEARWOOD  
GENERAL ATTORNEY

Ms. Agatha L. Mergenovich  
Secretary  
Interstate Commerce Commission  
Washington, D. C. 20423

No.

Date SEP 7 1979

Fee \$ 50.00

ICC Washington, D. C.

RECEIVED  
SEP 7 2 33 PM '79  
I.C.C.  
FEE OPERATION BR.

Dear Madam Secretary:

There is transmitted to you herewith for filing and recordation, pursuant to 49 U.S.C. Section 11303, five duly executed counterparts of a Lease Agreement dated August 20, 1979 between Whitehead & Kales Co., as lessor, whose address is 58 Haltiner Street, Detroit, Michigan 48218, and Louisville and Nashville Railroad Company, as lessee, whose address is 908 West Broadway, Louisville, Kentucky 40203.

The Equipment covered by the Lease Agreement is:

<u>Equipment</u>	<u>L&amp;N I. D. Nos. (Incl.)</u>	<u>Serial Nos. (Incl.)</u>
38 enclosed tri-level auto racks	1921-1958	67181-67256
64 enclosed bi-level auto racks	1959-2022	68335-68462

There has been no prior recordation of any document relating to this Equipment.

Attached hereto is a draft in the amount of \$50 payable to the Treasurer of the United States to cover the prescribed recordation fee for said Lease.

*Counterpart - Joe Dork*

This letter of transmittal is signed by an officer of the Louisville and Nashville Railroad Company designated for the purpose hereof who has knowledge of the matters set forth herein.

After recordation, please return the recorded counterparts of said Lease to:

Mr. David M. Yearwood  
General Attorney  
Louisville and Nashville Railroad Company  
908 West Broadway  
Louisville, Kentucky 40203

Respectfully yours,

Louisville and Nashville Railroad Company

By David M. Yearwood  
David M. Yearwood  
General Attorney

Attachments

9/7/79

**Interstate Commerce Commission**  
**Washington, D.C. 20423**

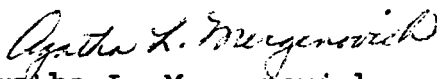
**OFFICE OF THE SECRETARY**

David M. Yardwood  
Louisville & Nashville Railroad Company  
908 W. Broadway  
Louisville, Kentucky 40203

Dear Sir

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 9/7/79 at 2:40pm , and assigned recordation number(s). 10798

Sincerely yours,

  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

SE-30  
(7/79)

LEASE AGREEMENT SEP - 7 1979 - 2 40 PM

INTERSTATE COMMERCE COMMISSION

THIS LEASE AGREEMENT made this 20th day of August, 1979, by and between WHITEHEAD & KALES CO. (hereinafter called the Manufacturer) and the LOUISVILLE AND NASHVILLE RAILROAD COMPANY (hereinafter called the Railroad):

WITNESSETH:

The Manufacturer and the Railroad have heretofore entered into a purchase agreement whereunder the Manufacturer agreed to construct, mount on TTX flat cars, and deliver to the Railroad, and the Railroad agreed to accept and pay for the following equipment (hereinafter called Racks):

<u>Equipment</u>	<u>L&amp;N I. D. Nos. (Incl.)</u>	<u>Serial Nos. (Incl.)</u>
38 enclosed tri-level auto racks	1921-1958	67181-67256
64 enclosed bi-level auto racks	1959-2022	68335-68462

Delivery of the Racks is tentatively scheduled to begin August 30, 1979. However, inasmuch as the Railroad has not as yet consummated financing arrangements, it is not in position to accept delivery of and pay for the Racks under the terms of the purchase agreement at this time. The Railroad represents that such financing arrangements will be consummated, however, on or before September 20, 1979. The Railroad (in order that it may use the Racks pending completion of the above financing arrangements) has arranged with the Manufacturer to give it temporary custody and possession of the Racks upon their completion, solely as a lessee of such Racks, and the Manufacturer is willing to do so upon the terms and conditions hereinafter stated.

In consideration of the premises and for a total rental of Ten Dollars, receipt of which is hereby acknowledged, the Manufacturer hereby leases the Racks to the Railroad until the consummation of the financing arrangements or until September 20, 1979, the earlier of said dates being the Termination Date of this Agreement.

After Railroad's representative finds that each Rack upon completion has been built in accordance with the requirements of the purchase agreement, he will execute and deliver to the Manufacturer at its plant a Certificate of Inspection certifying his inspection and acceptance. Title to the Racks shall remain in the Manufacturer and the Railroad's right and interest therein is and shall be solely that of possession, custody and use as lessee under this Agreement. Transfer of title shall be effected only at the time of delivery of the bill of sale. The Railroad, without expense to the Manufacturer, will promptly cause this Agreement to be filed and recorded with the Interstate Commerce Commission for recordation pursuant to 49 U.S.C. Section 11303. In addition, the Railroad shall do such other acts as may be required by law, or reasonably requested by the Manufacturer, for the protection of the Manufacturer's title to and interest in the Racks.

The Railroad agrees that it will permit no liens of any kind to attach to the Racks; and that it will

- (a) indemnify and save harmless the Manufacturer from any and all claims, expenses or liabilities of whatsoever kind; and
- (b) pay any and all taxes, fines, charges and penalties

that may accrue or be assessed or imposed upon the Racks or the Manufacturer because of its ownership or because of the use, operation, management or handling of the Racks by the Railroad during the term of this lease. The Railroad's obligations contained in this paragraph shall survive the termination by mutual agreement or otherwise of this Agreement.

The Railroad will, at its own expense, keep and maintain the Racks in good order and running condition and will at its option repair or replace or promptly pay to Manufacturer the purchase price in cash of those Racks which may be damaged or destroyed by any cause during the term of this Agreement. Upon the expiration or Termination of this Agreement, the Railroad will surrender and deliver up the Racks in good order and running condition to the Manufacturer free of all charges at the point designated by the Manufacturer.

Prior to the delivery of each Rack to the Railroad, it will be numbered with an L&N Railroad I. D. No. and Serial Numbers as hereinbefore indicated, and there shall be plainly, distinctly, permanently, and conspicuously marked on each side of each Rack the following in letters not less than one inch in height:

"Ownership Subject to a Security Interest"

The Railroad hereby agrees to indemnify the Manufacturer against any liability, loss or expense incurred by it as a result of placing markings on said Racks.

In case, during the continuance of this Agreement, such legend shall at any time be removed, defaced, or destroyed on any Rack, the Railroad shall immediately cause the same to be restored or replaced.

All or any of the rights, benefits or advantages of the Manufacturer, and the right to receive the purchase price of the Racks as provided in the purchase agreement, may be assigned by Manufacturer and reassigned by any assignee at any time or from time to time, provided, however, that no such assignment shall subject any such assignee to any of Manufacturer's guarantees, warranties, indemnities, or any other obligations contained in this Agreement or in the purchase agreement relating to the Racks.

In the event of any assignment of the Manufacturer of its rights to receive any payments under the purchase agreement, the rights of such assignee to such payments as may be assigned together with any other rights hereunder which can be and are so assigned, shall not be subject to any defense, set-off, counterclaim, or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer in respect to the Racks, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad, its successors and assigns only against the Manufacturer and its successors and assigns.

The Railroad agrees with the Manufacturer that the execution by the Manufacturer of this Agreement or the delivery by the Manufacturer to the Railroad of the Racks, as contemplated by this Agreement, shall not relieve the Railroad of its obligations to accept, take, and pay for the Cars in accordance with the terms of the purchase agreement, or impair any of the Manufacturer's rights under the purchase agreement.

WHITEHEAD & KALES COMPANY

By C. E. Wieser  
~~Assistant~~ Vice President

C. E. WIESER  
VICE PRES.-FINANCE

ATTEST:

G. Konchal  
~~Assistant Secretary~~

G. KONCHAL  
TREASURER

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

By W. B. Watkins  
Assistant Vice President

ATTEST:

W. D. Hoff  
Attesting Officer

STATE OF MICHIGAN)

) SS:

COUNTY OF WAYNE )

On this 5th day of <sup>September</sup>~~August~~, 1979, before me personally appeared C. E. WIESER, to me personally known, who, being by me duly sworn, says that he is ~~Assistant Vice President~~ <sup>VICE PRES. FINANCE</sup> of Whitehead & Kales Co., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Ardis M. Hall

Notary Public

C. E. WIESER  
VICE PRES. FINANCE

My Commission expires

SEAL

STATE OF KENTUCKY )

) SS:

COUNTY OF JEFFERSON )

On this 6th day of <sup>Sept.</sup>~~August~~, 1979, before me personally appeared D. G. Watkins, to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of Louisville and Nashville Railroad, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Norma J. Jones  
Notary Public

My Commission expires March 4, 1981

SEAL



